

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FRESENIUS KABI USA, LLC,

Plaintiff,

vs.

STATE OF NEBRASKA; THE NEBRASKA  
DEPARTMENT OF CORRECTIONAL  
SERVICES; and SCOTT FRAKES, in his  
Official Capacity as Director of the  
Nebraska Department of Correctional  
Services,

Defendants.

CASE NO. 18-cv-3109

MOTIONS FOR TEMPORARY  
RESTRAINING ORDER AND  
EXPEDITED DISCOVERY

COMES NOW Plaintiff, Fresenius Kabi USA, LLC ("Fresenius Kabi"), by and through its counsel of record, and moves this Court for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65 and for an order authorizing expedited discovery pursuant to Federal Rule of Civil Procedure 26(d)(1), and for the purpose of preserving the status quo pending hearing on and resolution of Plaintiff's Motion for Preliminary Injunction; authorizing Fresenius Kabi to immediately discover information from Defendants to identify which of Fresenius Kabi's drugs are in their possession, including the quantities, lot numbers, inventory logs, and invoices for any and all substances Defendants possess for the purposes of use in an execution by lethal injection; and restraining and enjoining the Defendants, or Defendants' agents, servants, employees, representatives, or any person in active concert or participation with Defendants, until such time as a ruling from this court on Plaintiff's accompanying Motion for Preliminary Injunction is obtained:

- From using any product manufactured by Fresenius Kabi, including Potassium Chloride (KCL) and Cisatracurium Besylate ("Cisatracurium"), in administering

its lethal-injection protocol for the execution of Carey Dean Moore, or any other execution of a human being;

- To impound any KCL or Cisatracurium in their possession.

In support of said motion, Fresenius Kabi states as follows:

1. As set forth in Fresenius Kabi's verified Complaint, attached exhibits, briefing, and declarations attached to its Motion for Preliminary Injunction, Fresenius Kabi will suffer immediate and irreparable harm if Carey Dean Moore is executed using its products seven days from now, including but not limited to harm to its reputation, commercial interests, property interests, and right to due process;

2. As set forth in Fresenius Kabi's verified Complaint, attached exhibits, briefing, and declarations attached to its Motion for Preliminary Injunction, good cause exists for expedited discovery;

3. Attached as Exhibits "A" and "B", respectively, are Fresenius Kabi's first sets of Interrogatories and Requests for Production to Defendants; and

4. Fresenius Kabi has served these motions on Defendants on this day, August 8, 2018.


WHEREFORE, Fresenius Kabi prays for a temporary restraining order restraining and enjoining the State of Nebraska, the Nebraska Department of Correctional Services, and Scott Frakes, and their agents, servants, employees, representatives, or any person in active concert or participation with the Defendants, consistent with the term described herein, and an order authorizing Fresenius Kabi to discover the information identified herein.

DATED this 8th day of August, 2018.

FRESENIUS KABI USA, LLC,  
Plaintiff

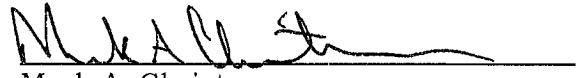
By: James M. Bausch #10236  
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By:

  
Mark A. Christensen #17660

**CERTIFICATE OF SERVICE**

I, Mark A. Christensen, hereby certify that on this 8th day of August, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system, which sent notification of such filing to the following:

  
Mark A. Christensen

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